Supreme Court, U.S.
FILED
JUN 25 1987
JOSEPH F. SPANIOL, JR.
CLERK

NO. 86-1960

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1986

BARBARA BROOKS,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE ILLINOIS SUPREME COURT

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED FOR REVIEW

Whether a petitioner's due process rights, as guaranteed by the Fourteenth Amendment, are offended, where a petitioner voluntarily confesses to striking her four year old son on the face, forcing him to drink a solution of salt and pepper, striking him on the back and head with a baseball bat and pushing him down a flight of stairs. Furthermore, whether a petitioner's Fifth Amendment privilege against self-incrimination is violated where, during petitioner's suppression hearing, all material witnesses to the confession were presented.

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OPINION BELOW

The petitioner was found guilty of the offense of involuntary manslaughter following a trial in the Circuit Court of Cook County, Illinois. The decision of the trial court was reversed by the Illinois Appellate Court (People v. Brooks, 138 Ill.

App. 3d 332, 485 N.E.2d 1342 (1st Dist. 1985)). Respondent's petition for leave to appeal to the Illinois Supreme Court was granted on December 27, 1985. The Illinois Supreme Court reversed the appellate court's decision and affirmed the decision of the trial court (People v. Brooks, 115 Ill. 2d 510, 505 N.E.2d 1342 (1987)). Petitioner's petition for rehearing was denied by the Illinois Supreme Court on March 30, 1987.

JURISDICTION

Petitioner invokes this Court's jurisdiction pursuant to 28 U.S.C. sec. 1257(3). However, as treated more fully below, respondent submits that no good reason exists for this Court to exercise its sound judicial discretion and grant the instant petition for a writ of certiorari.

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Const., Amendment V provides, in pertinent part, that:

> [No person] shall be compelled in a criminal case to be a witness against himself. . . .

U.S. Const., Amendment XIV provides, in pertinent part, that:

> [N]or shall any State deprive any person of life, liberty or property without due process of law. . . .

STATEMENT OF FACTS

The facts relevant to the issues raised by petitioner are adequately set forth in the opinion of the Illinois Supreme Court, and need not be restated at length. Respondent directs this Court's attention to the argument portion of this brief in opposition, wherein the facts pertaining to the claim of error are discussed.

REASON FOR DENYING THE WRIT

A CRIMINAL DEFENDANT'S DUE PROCESS RIGHTS ARE NOT OFFENDED WHERE THE REVIEWING COURT BASES ITS OPINION ON A THOROUGH REVIEW OF THE RECORD AND DETERMINES THAT THE EVIDENCE CLEARLY DEMONSTRATES THAT AFTER BEING READ HER MIRANDA RIGHTS, PETITIONER VOLUNTARILY CONFESSED THAT SHE STRUCK HER FOUR YEAR OLD SON SIX TIMES IN THE FACE, FORCED HIM TO DRINK A SOLUTION OF SALT AND PEPPER, STRUCK HIM ON THE BACK AND SIDE OF HIS HEAD REPEATEDLY WITH A WOODEN BASEBALL BAT AND PUSHED HIM DOWN A FLIGHT OF STAIRS. FURTHERMORE, THE ILLINOIS SUPREME COURT SPECIFICALLY FOUND THAT ALL MATERIAL WITNESSES WERE PRESENTED DURING PETITIONER'S SUPPRESSION HEARING THEREBY PRECLUDING THE ASSERTION OF THE FIFTH AMENDMENT PRIVILEGE AGAINST SELF-INCRIMINATION.

It is the petitioner's contention that the failure to produce the testimony of every material witness to petitioner's confession during the suppression hearing denied her the right against self-incrimination and due process of law. Respondent maintains that no violation of petitioner's right against self-incrimination or due process rights occurred in this instance and further maintain that every material witness to petitioner's confession was presented during the suppression hearing. For the reasons that follow, respondent respectfully submits that the petition for a writ of certiorari should be denied.

It is firmly established that a voluntary confession does not offend an individual's constitutional rights. This Court, in Bram v. United States, 168 U.S. 532

(1897), held that the constitutional inquiry for determining whether a confession is voluntary is not whether the conduct of state officers in obtaining the confession was shocking, but whether the confession was "free and voluntary: that is, [it] must not be extracted by any sort of threats or violence, nor obtained by any direct or implied promises, however slight, nor by the exertion of any improper influence. 168 U.S. at 542-543.

In Schneckloth v. Bustamonte, 412 U.S. 218 (1973), this Court stated that in determining whether a defendant's will was overborne in a particular case, the Court must assess the totality of all the surrounding circumstances - both the characteristics of the accused and the details of the interrogation. 412 U.S. at 226. Furthermore, the voluntariness of a

confession need be established only by a preponderance of the evidence. Lego v. Twomey, 404 U.S. 477 at 488-489 (1972). Hence, voluntariness is a question of fact to be determined from the totality of circumstances. Schneckloth, 412 U.S. at 227.

It is a well established rule in Illinois that when the voluntary nature of a confession is brought into question by a motion to suppress, all material witnesses connected with the taking of the statement must be presented or their absence explained. People v. Armstrong, 51 Ill. 2d 471, 475-476, 282 N.E.2d 712 (1972). However, every person who had contact with the defendant or who was present during the defendant's detention need not be produced. People v. Beamer, 59 Ill. App. 3d 855, 376 N.E.2d 368 (2d Dist. 1978). The only witnesses who must testify to prove that a confession was voluntary are those who

played a role in procuring the confession or were present when the confession was taken. People v. Glaton, 33 Ill. App. 3d 124, 338 N.E.2d 30 (1st Dist. 1975). Thus, the Illinois material witness rule requires the State to present the testimony of those who were present during the misconduct alleged. People v. Wright, 24 Ill. 2d 88, 180 N.E.2d 689 (1972).

In the instant case, the Illinois Supreme Court found that Youth Officer Abran's absence from the suppression hearing was excused and that Assistant State's Attorney Edwards was not a material witness. The Court recognized that there was no testimony that Edwards took part in any of the alleged acts of misconduct or that Edwards was present when any of the alleged threats were uttered. People v. Brooks, 115 Ill. 2d at 518 (1987). Therefore, the State

was not required to present his testimony at the suppression hearing. 115 Ill. 2d at 517-518.

This Court has repeatedly held that all testimonial conflict is settled by the judgment of the state courts. Where they have made explicit findings of fact, those findings conclude and form the basis of this Court's review. Culombe v. Connecticut, 367 U.S. 568 (1961). Determination of what happened requires assessments of the relative credibility of witnesses whose stories, in cases involving claims of coercion, are frequently, if indeed not almost invariably, contradictory. That ascertainment belongs to the trier of facts before whom those witnesses actually appear, subject to whatever corrective powers a State's appellate processes afford. 367 U.S. at 603.

The material-witness rule is strictly an Illinois requirement and is not constitutionally mandated. Ill. Rev. Stat. 1981, ch. 38, par. 114-11. In Illinois, not only must a confession be voluntary, but all material witnesses must be called to prove that the confession was voluntary. However, the constitution only requires that the court assess the totality of all the surrounding circumstances to determine whether a confession was in fact voluntary. Schneckloth v. Bustamonte, 412 U.S. 218, 226 (1972). Furthermore, this Court has firmly established that state courts may construe their own statutes more strictly than do federal courts. Pruneyard Shopping Center v. Robins, 447 U.S. 74, 81 (1980). (See also, Cooper v. California, 386 U.S. 568 (1967) where this Court recognized a State's power to impose higher standards on searches and

seizures than required by the Federal Constitution if it chooses to do so.) Hence, the Illinois Supreme Court was proper in finding that the State was not required to present the testimony of Assistant State's Attorney Edwards where the evidence failed to eestablish that Edwards was a material witness. The factual disputes involved in this case have already been resolved by the Illinois Supreme Court in favor of respondent. Petitioner has failed to present a unique situation which would warrant a review by this Court.

As the petitioner has failed to raise any important constitutional issues or present any grounds which would justify the consumption of this Court's valuable time, the instant petition for writ of certiorari should be denied.

CONCLUSION

WHEREFORE, for all the foregoing reasons the respondent respectfully prays that this Honorable Court deny the instant Petition for Writ of Certiorari.

Respectfully submitted,

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